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SENATE of the UNITED STATES,
Wednesday, January 13.

DEBATE

On motion of Mr. Breckenridge, to repeal the act passed last session for new organizing the courts of the United States.

Mr. STONE, of North-Carolina. The importance of the present question might, I presume, justify any member in delivering his sentiments without apology. But from the able manner in which the subject has already been discussed, I should have been induced to adhere to my usual course since I have been a member of this body, and leaving its elucidation to others of greater experience and more talents, have been contented with a silent vote. As however, the state whose servent I am, and whose faithful servant I wish at all times to be found, has instructed her members on this subject, I will endeavour in the plain way of which alone I am capable, to assign the reasons for my vote. And in doing this, I rather wish than hope that I may state any thing worthy the consideration of this enlightened assembly.

The argument upon this question has naturally divided into two parts, the one of expediency—the other of constitutionality. If the repeal of this law shall be deemed expedient, the senate will doubtless consider it their duty to repeal it if no constitutional objection opposes it; but if it shall be deemed unconstitutional to repeal it, then no considerations of expediency can stand in the way of that solemn instrument we are all sworn to support.

Before entering into an examination of the expediency of the repeal, it may be proper to remark, that gentlemen who have spoken against the repeal, whose talents and eloquence I highly admire, have not correctly stated the question. The true question is, not whether we shall deprive the people of the United States of all their courts of justice; but whether we shall restore to them their former courts. Shall we, or shall we not, continue an experiment made, or attempted to be made. I will not say improperly, because my respect for this body and for my country, forbid the imputation; but I will say that the length of time we remained without this system, and the repeated ineffectual attempts made to establish it, present strong reasons for inferring that there are not those great apparent reasons in favour of it that have been stated. A system, some what similar to the present, had been rejected by the legislature because they preferred the former system. Another evidence to the same purport is, that during the last session when the subject was again revived, and the prsent plan adopted, an amendment was offered, to amend by extending and enlarging the former establishment.

(Here Mr. STONE read the amendment proposed, which augmented the number of judges of the supreme court, and assigned their circuits.)

This amendment was rejected, and from the vote entered on the journal of that day, it appears that the difference of votes against the amendment was formed of those gentlemen who were nominated to appointments made vacant by the promotions under the new law. I do not state this circumstance as an evidence that these gentlemen were influenced by improper motives; but to shew that the manner in which the new system was formed, was not calculated to establish in the public mind a decided preference of it over the old system.

Having made these remarks on the great deliberation said to have been manifested in the adoption of this plan, I hope I may be permitted to express my perfect coincidence with the gentleman from Connecticut, that courts are necessary for the administration of justice, and that without them our laws would be a dead letter.

But it appears to me essential to the due administration of justice, that those who preside in our courts should be well acquainted with the laws which are to guide their decisions. And I apprehend that no way is so much calculated to impart this knowledge as a practical acquaintance with them, by attending courts in the several states, and hearing gentlemen, who are particularly acquainted with them, explain and discuss them. It is, therefore, absolutely necessary in my mind, that the judges of the supreme court, whose power controls all the other tribunals, and on whose decisions rest the property, the reputation, the liberty, and lives of our citizens, should, by riding the circuits, render themselves practically acquainted with their duties. It is well known that the knowledge of the laws of a state is not to be suddenly acquired, and it is reasonable to conclude that that knowledge is most correctly possessed by men whose whole life has been devoted to the acquisition. It is also perfectly well known that the knowledge of the modes and principles of practice in the different states, or of any state, is most effectually to be acquired in courts, where gentlemen of skill and experience apply those principles to use upon existing points.

This defect then, of the present plan, is in my opinion, so radical, that of itself it would decide with me the question of expediency.

With rega[illegible]ne expence of this new system, I wil[illegible]hat it weighs as much as it is worth. [illegible] single consideration of an expenditure [illegible],000 dollars, may not be deemed o[illegible]ch importance, when weighed with th[illegible]nefits derived from an administration [illegible]ce over this extensive country. If this [illegible] object can be better effected with the [illegible]tional expence, then it is proper to consider whether the amelioration is worth the price; but if it is not better effected, it surely cannot be the wish of any gentleman to incur a useless expence. If, when this law passed, the business, to the transaction of which the old courts were fully competent, was lessening, then surely there was no occasion for additional tribunals.

The more important consideration involves the constitutional question: Can we, according to that sacred instrument, repeal this law, and destroy the offices created by it? If we cannot, I hope the senate will reject the proposition on your table—But if we can, as on examination I think we may I trust the resolution will be adopted.

The gentleman from Kentucky, who introduced this subject, has so fully and forcibly stated that part of the argument which establishes, that the office of judge being declared by the constitution to be during good behaviour, must evidently apply to existing offices, and not to contest the power of the legislature in doing away offices, that I shall not touch it.

I have taken a view of the constitution, which, though new in this argument, appears to me to be correct and conclusive.—The 4th section of the 2d article of the constitution declares, that "the president, the vice-president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery or other high crimes and misdemeanors."

This section being added to the article establishing the executive power, evidently operates as a restriction and curb to that power—to prevent the president, vice president or any officer in the appointment of the president from remaining in office, when in the opinion of the legislature, the public good requires them to be displaced. The practical construction put upon this article in connection with other parts of the constitution, is, that all officers in the appointment of the president *may* be removed at his will; but that those officers, together with himself and vice-president, *shall* be removed upon impeachment and conviction by the legislature. No part of the constitution expresly gives the power of removal to the president; but a construction has been adopted and practised upon from necessity, giving him that power in all cases in which he is not expresly restrained from the exercise of it. The judges afford an instance in which he is expresly restrained from removal—It being declared by the 1st section of the 3d article of the constitution, that the judges, both of the supreme and inferior courts, shall hold their offices during good behaviour. They doubtless shall (as against the president's power to retain them in office) in common with other officers of his appointment, be removed from office by impeachment and conviction; but it does not follow that they may not be removed by other means. They shall hold their offices during good behaviour, and they shall be removed from office upon impeachment and conviction of treaton, bribery and other high crimes and misdemeanors. If the words *impeachment of high crimes and misdemeanors*, be understood according to any construction of them hitherto received and established, it will be found that although a judge, guilty of high cimes and misdemeanors, is always guilty of misbehaviour in office, yet that of the various species of misbehaviour in office, which may render it exceedingly improper that a judge should continue in office, many of them are neither treason, nor bribery, nor can they properly be dignified by the appellation of high crimes and misdemeanors. And for the impeachment of which no precedent can be found; nor would the words of the constitution justify such impeachment. To what source then shall we resort for a knowledge of what constitutes this thing called misbehaviour in office? The constitution surely did not intend that a circumstance so important as the tenure by which the judges hold their offices should be incapable of being ascertained. *Their misbehaviour* certainly is not an impeachable offence; still it is the ground upon which the judges are to be removed from office. The process of impeachment, therefore, cannot be the only one by which the judges may be removed from office under and according to the constitution. I take it, therefore to be a thing undeniable, that there resides somewhere in the government a power to declare what shall amount to misbehaviour in office by the judges, and to remove them from office for the same without impeachment. The constitution does not prohibit their removal by the legislature, who have the powers to make all laws necessary and proper for carrying into execution the power vested by the constitution in the government of the United States. But, says the gentleman from New-York, the judges are officers instituted by the constitution to save the people from their great est enemies, themselves—and therefore they should be entirely independent of, and beyond the controul of the legislature.—If such was the design of those wise men who framed and adopted the constitution, can it be presumed they would have provided so ineffectual a barrier as these judges can readily be shown to be? It is allowed on all hands, the legislature may modify the courts—they may add judges, they may fix the times at which the courts shall sit, &c. Suppose the legislature to have interest distinct from the people—and the judges to stand in the way of executing any favourite measure.—Can any thing be more easy than for the legislature to declare that the courts instead of being held semi annually, or oftener, shall be held only once in six, eight, ten, or twenty years; or in order to free themselves from the opposition of the present supreme court, to declare that court shall hereafter be held by thirteen judges. An understanding between the president and the senate would make it practicable to fill the new offices with men of different views and opinions from those now in office—And what, in either case, would become of this boasted protection of the people against themselves. I cannot conceive the constitution intended so feeble a barrier—a barrier so easily evaded.

What danger is there to the people from the legislature which the courts controul? The means of oppression nearest at hand to the legislature, & which affords the strongest temptation to their use, are, the raising extravagant and unnecessary sums of money, and the embodying large and useless armies.—Can the courts oppose effectual checks to these powers? I presume not.—The constitution permits their exercise to any extent within the discretion of the legislature.

The objects of courts of law, as I understand them, are, to settle questions of right between suiters—to enforce obedience to the laws—and to protect the citizens against the oppressive use of power in the executive officers.—Not to protect them against the legislature; for that I think I have shewn to be impossible with the powers which the legislature may safely use and exercise; and because the people have retained in their own hands the power of controuling and directing the legislature, by their immediate, and mediate elections of president, senate and house of representatives.

It is not alone the sixteen rank and file, which the gentleman from New York has so ludicrously depicted, that I apprehend immediate danger from, but it is the principle which converts the office of judge into an hospital of incurables, and declares that an expiring faction, after having lost the public confidence, may add to those sixteen until they become 1600, or 16,000; and that the restored good sense of the legislature, the whole government and the constitution, retains no means of casting them off, but by destroying itself and resorting to revolutionary principles.—The legislature may repeal unnecessary taxes, may disband useless and expensive armies, may declare they will no longer be bound by the stipulations of an oppressive treaty; and if war should follow, the constitution is still safe. But if the construction which gentlemen contend for be correct, a band of drones to any amount in number, under the denomination of judges, may prey upon the substance of the people, and the government retains not the power to remove them but by destroying the constitution itself.

I beseech this enlightened assembly to pause before they adopt a construction capable of producing so great a mischief, and so ineffectual to the ends proposed.

The question is not now, as it would seem from the arguments of gentlemen, they understand it to be; whether we shall abolish offices without compensating the officers for the sacrifices they may have made. If a proposal to compensate them shall be brought forward, the legislature will surely do what honor and justice shall require.

If I possessed equal powers of speech with the gentleman from Connecticut, I might be tempted to make as impressive an address to the feelings of the senate. Sure I am, I feel as deep an interest in, and solicitude for, the constitution, as that gentleman. I view it with him as the bond of our union and the foundation of our safety. But it must be supported on reasonable and practical grounds.

My understanding is incapable of seeing how the absurdities and evils of the construction contended for, can be avoided. I hope therefore that the power of the legislature to put down, as well as to build up, courts of justice, as the public good may require, will be established.

Not have accustomed myself to deliver my sentiments in this or the other branch of the legislature, I may not have comprised them in so short a compass, nor in such orderly shape, as would be proper in submitting them to this enlightened assembly. If, however, I have succeeded in stating intelligibly the grounds of my conviction, I am satisfied. If my remarks have contributed to elucidate the subject to others, I shall rejoice: but if failing in this, they also are mixed with error, I trust gentlemen will set them right.

From the London Porcupine.

To the right honourable Lord Hawkesbury, his Majesty's Secretary of State for Foreign Affairs.

MY LORD—The bare enumeration of our numerous conquests has already cost me more time and pains, than it cost you to surrender them into the hands of our enemy. I have traced your lordship over the Mediterranean and the Levant, into Egypt and Africa, on the seas and the land of Asia, to the islands and the continent of America. Gracious God! what a scene of desolation! Fortresses, harbours, cities, provinces and islands, you have scattered like autumnal leaves. The whole globe, my lord, is strewed with the ruins of England. Even the fisheries on our own coasts were a charge too weighty for your feeble and trembling hands.

It is for the French, and, what is worse, it is for the *regicide* French, that our fleets and armies have fought, bled and triumphed; it was for them that we took Minorca and Malta; it was for them that we defended Porto-Ferrajo; we drove them from Egypt, that we might again leave it at their mercy, together with the other dominions of the Turk, who, in any future emergency, will in vain hope for protection from our fleets and armies; which, by your treaty, my lord, are forever banished from a sea, of which their valour had given us the absolute dominion. For the regecides of France, and to facilitate their communication with India, we received from the partisans of the Stadtholder, the Cape of Good Hope and the fleet in its harbor. To the regicides of France we have surrendered the Spice Islands; in South America we have gained for them a vast continental territory, extending from the Amazons to the Oronoko, and that too, at the expence of Portugal and of the Stadtholder, by whose adherents Surinam was committed to our charge. The French islands, particularly Martinico, which we received from the faithful subjects of Louis XVI. we have given up to those who led that prince to the block.